



NCTA

NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

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EX PARTE

May 20, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W. – Room TW-A325
Washington, DC 20554

Re: CS Docket No. 98-120

Dear Ms. Dortch:

On May 16, 2002, Jill Luckett (Vice President, NCTA Program Network Policy), Michael Schooler (Deputy General Counsel), Diane Burstein (Deputy General Counsel) and I met with Ken Ferree, William Johnson, Rick Chessen and Mary Beth Murphy to discuss NCTA's comments in the above-captioned proceeding.

Consistent with the language of the statute and its legislative history (*see* House Report at 92-93), as well as the *WGN* decision, NCTA urged the Commission to adopt a narrow view of what constitutes "program-related material." NCTA reiterated its view that the Communications Act does not require carriage of ancillary and supplementary material (including material provided by third parties through lease of a broadcaster's digital capacity), even if "program-related." NCTA further proposed that the Commission afford operators flexibility to place digital signals on digital tiers during the transition period where analog versions of those signals are provided on the analog basic tier.

Finally, NCTA supported the Commission's January 2001 determination that the term "primary video" referred to a single, digital program stream. Case law confirms that "in essence ... there can only be one 'primary' anything." *Hakala v. Atxam Corp.*, 753 P. 2d 1144 (S Ct. AK 1988).

Respectfully submitted,

/s/ **Daniel L. Brenner**

Daniel L. Brenner

cc: Ken Ferree, Chief, Media Bureau
Bill Johnson, Deputy Chief, Media Bureau
Rick Chessen, Associate Bureau Chief, Media Bureau
Mary Beth Murphy, Division Chief, Policy Division, Media Bureau